

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 8395 of the Fish and Game Code and to implement, interpret or make specific Section 8395 of said Code, proposes to amend Section 112, Title 14, California Code of Regulations, relating to Surfperch.

Informative Digest/Policy Statement Overview

Existing regulations authorize the take of surfperch of the family Embiotocidae for commercial purposes from July 16th through April 30th, except shiner surfperch (*Cymatogaster aggregata*) which may be taken, sold, or purchased at any time. Surfperch may be sold or purchased only between July 16th and May 10th [Section 8395, Fish and Game Code (FGC)]. South of a line drawn east and west through Point Arguello, barred surfperch, redbtail surfperch, and calico surfperch may not be taken for commercial purposes (Section 8395, FGC). Surfperch of these three species that have been taken north of the line may be sold or purchased provided that each individual fish is permanently attached with a tag inscribed "California Department of Fish and Game-Surfperch" prior to shipment south of Point Arguello [Section 112, Title 14, California Code of Regulations (CCR)].

Also, the Commission was recently granted authority by the State Legislature to adopt regulations to manage the commercial surfperch fishery beginning in 2003, including authority to extend the commercial fishing closure for surfperch (Chap. 573, Stats 2002).

Surfperch include at least nineteen species of fish in the family Embiotocidae (variously termed surfperch, perch, and seaperch) that occur off California.

Proposed changes to the commercial surfperch regulations would extend the closed season for surfperch of the family Embiotocidae to July 30th and authorize sale and purchase of surfperch only between August 1st and May 10th. The intended purpose of the proposed regulations is to offer further protection of spawning females while continuing to provide for a viable commercial fishery. In addition, minor organizational and editorial changes are (also) proposed to improve the clarity and consistency of the regulations.

Surfperch have undergone declines in catch, size, catch-per-unit effort, and abundance based on fisheries dependent and independent surveys. They possess life history characteristics that make them susceptible to overfishing and vulnerable to habitat loss and degradation. Some species use nearshore areas as well as bays and estuaries to mate and give birth, with some species more at risk than others. Surfperch are live-bearers that produce an average of only 15 young each year, and may not rebound from population declines quickly. Concerns exist for the cumulative impacts of habitat loss and fishing that could lead to localized depletion of some surfperch species.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California on Friday, December 5, at 8:30 a.m., or as soon thereafter as the matter

may be heard. It is requested, but not required, that written comments be submitted on or before November 26, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than December 5, 2003, at the hearing in Sacramento, CA. E-mail comments must include the true name and mailing address of the commenter.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. Eric Larson, Department of Fish and Game, phone (650) 631-7730, 255 Harbor Blvd., Belmont, CA 94002, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action is not expected to have a significant statewide adverse economic impact affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed closure extension of the commercial surfperch fishery may have a limited short-term impact on fishermen and fish wholesalers. The long-term (1984-2002) mean percentage of landings occurring in July is 9.5 percent representing 9,461.9 pounds. In July of 2002, a total of 41 fishermen landed 3,612 pounds of surfperch valued at \$5,235 or an average of \$128 per fisherman. The proposed closure extension will maintain a viable fishery and ensure that more surfperch would be allowed to spawn. Post spawning fish would be available to the fishery in August. In the long term, these limited short-term economic impacts may be mitigated by higher economic returns with a more abundant surfperch resource.

(b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: October 7, 2003

Robert R. Treanor
Executive Director